

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>ARLANDO K. HENSON,</b>	)	
	)	
<b>Petitioner/Defendant,</b>	)	
	)	
<b>vs.</b>	)	<b>Civil No. 06-CV-476-JPG</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>Criminal No. 05-CR-40045-JPG</b>
	)	
<b>Respondent/Plaintiff.</b>	)	

**MEMORANDUM AND ORDER**

This matter comes before the Court on petitioner Arlando Henson’s (“Henson”) motion for a free copy of the transcript of his sentencing proceedings (Doc. 21), presumably to assist him in prosecuting his § 2255 motion. A transcript of his sentencing hearing has not been prepared, although it could be if circumstances warrant it. When transcripts have not been prepared, a defendant has a right to have transcripts prepared at the government’s expense under limited circumstances. This right is dependent upon: (1) whether the defendant can establish that he is indigent, and (2) whether the transcript is needed to decide an issue presented by a pending and non-frivolous action. *See* 28 U.S.C. § 753(f). These requirements do not violate the Constitution. *See United States v. McCollum*, 426 U.S. 317 (1976) (court’s decision not to grant indigent federal prisoner unconditional right to obtain trial transcript for § 2255 proceeding does not violate due process or equal protection).

Henson has not provided evidence that he is indigent and cannot afford to pay the cost of preparing the transcript he seeks. Furthermore, while the Court expresses no opinion on whether Henson’s § 2255 motion is frivolous, it can say that the transcripts requested is not needed to decide the issues raised by the motion. Henson’s § 2255 motion raises issues only dealing with his guilty plea and in counsel’s performance in connection with that plea, not his sentencing

proceedings. Accordingly, the Court **DENIES** the motion for transcripts (Doc. 21).

**IT IS SO ORDERED.**

**DATED: April 10, 2007**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**U.S. DISTRICT JUDGE**